

**COMMITTEE ON RULES OF PROCEDURE
IN DOMESTIC RELATIONS CASES**

Wednesday, June 4, 2004 10:00 am – 3:00 pm

Arizona Courts Building

1501 W. Washington, Conference Room 345

Teleconference #: (602) 542-9006

Web Site: <http://www.supreme.state.az.us/drrc/>

Members Present:

Hon. Mark Armstrong, Chair

Annette Burns, Esq.

Hon. Norm Davis

Annette Everlove, Esq.

Bridget Humphrey, Esq.

Phil Knox, Esq.

Janet Metcalf, Esq.

Richard Scholz, Esq.

Brian Yee, Ph.D.

Members Not Present:

Deborah Fine, Esq.

Hon. Dale Nielson

Robert Schwartz, Esq.

Staff Present

Konnie Young

Karen Kretschman

Isabel Gillett

Members Represented by Proxy:

Laurie Thomas for Hon. Michael Jeanes

Mary Boyte, Esq. for Hon. John Nelson

Janet Sell, Esq. for Debra Tanner, Esq.

Hon. Karen Adam for Hon. Nanette Warner

Quorum:

Yes

1. Call to Order: Hon. Mark Armstrong

After welcoming Committee members, introductions, and determination of a quorum, Judge Armstrong reviewed the new materials contained in the meeting packet:

- Membership List
- Workgroup Lists
- Workgroup contact information
- Calendar of meetings for DR Rules, Presiding Judges, Arizona Judicial Council, Committee on Superior Court, and Supreme Court Justices' Rules
- Proposed Rule 26.1
- Current Master Draft of the Rules
- Memo from Child Support Enforcement Section, Office of the Attorney General
- Minutes from May 17, 2004: Judge Armstrong asked for a motion to approve the minutes at this time.

Motion: Minutes Approved.

Seconded

Vote: Minutes Approved.

2. Time Table for the *Rules of Family Law Procedure (RFLP)*

Judge Armstrong explained to the members that the RFLP draft should be completed by the end of 2004 and then presented to the Committee on Superior Court in 2005, the Presiding Judges and Arizona Judicial Council in March, 2005, and the Justices' Rules meeting in June. After the Supreme Court reviews and approves the *RFLP*, it will go out for public comment.

He said that there were two schedules that could be pursued. The most aggressive schedule would require the Committee to have a completed draft, rules petition, and correlation table much before November 19, 2004 in order to get on the agenda for the November 19, 2004 Committee on Superior Court meeting. The Presiding Judges meet on December 9, 2004 and the Arizona Judicial Council meets on December 10, 2004, preceding the Justices' Rules meeting on January 11, 2005.

The other option would be to have a draft prepared by June, 2005 in terms of the Supreme Court's consideration. The Presiding Judges and the Arizona Judicial Council meet in March, 2005. With this option, the Committee would have to meet after the *RFLP* goes out for public comment. Judge Armstrong advised the members that he will also present to each group before the earlier dates and make them aware of how the Committee is proceeding. Judge Armstrong believes that if the Committee could have all of the workgroups' rules drafts by September, the overall review could be finished within the next few months, including the rules petition and correlation table, and the Committee would be able to meet the November, 2004 timeline.

After discussion, a motion was made to follow the second plan.

Motion: Use the second time table:

- **Complete drafting by the end of 2004;**
- **Submit proposal together with correlation table and rule petition to the Committee on Superior Court (probably in February, 2005);**
- **Submit *RFLP* to Presiding Judges and Arizona Judicial Council in March, 2005, and**
- **Submit to the Justices' Rules meeting on June 2, 2005.**

Seconded.

Vote: Approved.

3. Memo Regarding Rule 50 (Temporary Support Orders) from Child Support Enforcement Section, Office of the Attorney General

Judge Armstrong asked Janet Sell if she would like to speak about Rule 50 (Temporary Support Orders) at this time, as it would not normally come up in the discussion of the draft. Janet said she was prepared to do so.

Janet advised the group that her office discussed the proposal on page 54, subsections (i) and (j) in the Rules draft, and had reached the conclusion that those provisions were not consistent with either Arizona or Federal law regarding child support guidelines. She said that Arizona law is clear that child support must be based on the guidelines, not on the parties' positions.

Janet's group attempted to develop a summary approach to entering a child support order, which still requires application of the guidelines to arrive at a summary for the child support order. They propose that the court can still enter the summary order, but would make that order based on the written documents before them, and apply the Child Support Guidelines.

The other issue they saw was that the language in subsections (i) and (j) states the temporary child support order does not prejudice the rights of the parties to have the issue finally determined at a final subsequent hearing or trial. To go backwards or require a child support amount retroactively would also be contrary to both Arizona and Federal law, which prohibits retroactive modification of child support. Janet stated that it is not a problem if the decision is that the child support was less than it ought to have been; however, it is a real problem with difficult consequences if the decision is that it was more than it ought to have been.

In terms of the structure of the Rule, they thought it made sense to deal with the simplified child support process first and deal with the summary temporary child support orders second. The summary temporary child support order refers to what the court can do with the documents received in the other paragraph, and they thought it made more sense to have the paragraphs reordered.

Discussion ensued. Judge Armstrong stated that the language would be clarified regarding use of guidelines in the current proposal. A note will also be added indicating that the Committee may want to consider provision for a hearing if retroactive modification is not allowed.

4. Reports from Workgroups:

a. Workgroup 1: Sections I and II (Bridget Humphrey, Chair)

Bridget stated that the remaining work that needs to be finished is to clean up some of the general rules and make a policy decision based on the entire packet of rules. The workgroup is also waiting for the Supreme Court to address the privacy issue.

b. Workgroup 2: Section XI (Judge Norm Davis, Chair)

Judge Davis stated that this workgroup had finished its task, subject to the final revision.

c. Workgroup 3: Section III (Annette Burns, Chair)

Annette stated that they had a request for a specific subsection concerning default paternity. She said that 48(b)(1) subsection (iii) was Kim Gillespie's work product. It was e-mailed to Debra Tanner to get comment from her office, and Annette will speak to Janet about this today. It has also been sent to Commissioner Rhonda Repp in Yavapai for comment. Annette has not heard back from anyone at this time. The workgroup wants more input from Commissioner Repp and these agencies who deal with this, to make sure it covers what they are seeking for a default paternity rule.

d. Workgroup 4: Section IV (Judge Davis, Chair)

Judge Davis stated that this workgroup does not have anything additional to report, other than to go back and look at what was discussed today, and think of another option, depending on how the retroactivity comes out.

e. Workgroup 5: Section V (Judge Nelson, Chair)

Judge Armstrong stated that as Judge Nelson was not present, Judge Davis would discuss his draft regarding routine disclosure.

Judge Davis reminded the members about what they had decided earlier regarding the general disclosure rule for routine cases: the presumptive position on disclosure should be that parties will put together a standard set of documents early on and prepare statements for the court that they are going to use consistently throughout all hearings.

Judge Davis presented his draft. The thrust of this draft was that in the routine case, within 20 days after the filing of a Response or Answer to an initial Petition or Complaint, each party shall disclose in writing to every other party a proposed Resolution Statement, including child support to be paid, property, and debt allocation.

He said that Bob Schwartz had a much more complex disclosure requirement for complex cases, and Judge Davis anticipates that there will be another rule pertaining to complex cases. He said he did nothing with the IV-D section, and Janet Sell stated that the only change needed for the IV-D section is to change "parties" to "parents."

Discussion ensued regarding distinguishing between a “complex” and “non-complex” case and how that decision will be made. Judge Armstrong stated that Workgroup 5 will work through this.

Janet Metcalf stated that Bob Schwartz is working on a simple disclosure and a more difficult disclosure statement. Judge Armstrong asked Judge Davis to send his draft electronically to Bob Schwartz and Konnie.

TASK: Judge Davis will send his draft electronically to Bob Schwartz and Konnie.

f. Workgroup 6: Section VI (Judge Warner, Chair)

Annette Burns spoke for Judge Warner stating that draft pages 84-90, the Special Master Pilot Project, mostly came from Judge Davis. Some of what the workgroup had added from page 90–92 was not on the draft. She said it is difficult to discuss dispute resolution and include both services available in the court system and outside the court system without that material. The workgroup will wait to discuss this until Konnie gets the information on the draft.

TASK: Annette will send the updated draft of the dispute resolution section to Konnie.

Annette stated that this workgroup needs to organize what they have already done, and have it back to Judge Warner when she returns. Judge Armstrong asked Annette to add Diana Hegyi to Workgroup 6. Bridget suggested that they also add Lisa Melton to this workgroup, as there is no one on the workgroup who is related to Domestic Violence.

TASK: Annette will add Diana Hegyi and Lisa Melton to the membership of Workgroup 6.

5. Lunch/Workgroups meet

The Committee recessed for lunch and several workgroups met over lunch.

6. Reports from Workgroups (Continued)

The Committee reconvened, and Judge Armstrong asked if any of the workgroups had anything to discuss.

a. Workgroup 6 (Judge Warner, Chair)

Annette asked for direction from the Committee regarding whether the scope of this workgroup includes pre-trial statements. Judge Armstrong stated that he believed that pre-trial statements would fall under Section III, which is pleadings and motions, and pre-trial procedure. He added that if we are talking about a different kind of statement for settlement purposes only, it could be included in the scope of Workgroup 6. At the present time, no one is responsible for Section III. It was originally under the scope of Workgroup 7, and Judge Armstrong said that he will ask Judge Nielson to include this again within Workgroup 7.

Annette stated that Workgroup 6 has not presented on a proposed *RFLP* rule for *ARCP* Rule 16(g), and they are still intending to do that. She also stated that forms will go with pre-trial procedures.

b. Workgroup 4 (Judge Davis, Chair)

Judge Davis stated that Workgroup 4 may have a direction to go on resolving modifying Temporary Orders. He also stated that whether they are allowed to be modified or not creates problems for ATLAS, and the members need to keep that in mind. He said that one option was to adjust inequities prospectively only. The second option is to presume to stipulate to do it that way, unless you ask for a hearing.

Judge Armstrong asked Judge Davis to send to Konnie the final loose consensus version regarding modifying Temporary Orders to replace the other versions.

TASK: Judge Davis will give Konnie the final loose consensus version regarding modifying Temporary Orders.

Judge Davis stated that another issue that needs to be discussed is whether Temporary Orders survive the entry of a decree. His workgroup thought they should add a rule to Temporary Orders that might need to be included in the Trial Workgroup. The gist of the new rule is that if the Temporary Orders survive a Decree, this has to be mentioned in the Decree; everyone involved must understand that when the Decree is entered, the case is wrapped up to that point. If a party wants an issue to survive, it needs to be brought up and addressed at that time.

Judge Davis stated that Workgroup 9 is not far enough along on their issues to give any information at this time.

Judge Armstrong asked if there were any other groups that needed to report to the Committee, and there were none. He then stated that there was a note dealing with the joinder of parties, included in Judge Davis' Workgroup 2, and asked if anything had been done on this issue. No one remembered why there was a note on this issue, and Judge Armstrong said he would remove the note.

There was a suggestion that A.R.S. § 25.314(D) needed to be included in that section. It does not serve a rule-making purpose, but would alert people that this statute exists. Judge Davis stated that it looks as though we are inviting many joinders, and asked if we needed all of them. Janet Metcalf said that without joinders, the enforcement mechanisms would be wiped out. Bridget stated that Workgroup 1 had been looking at that, but thought the whole scope of the rules was going to be reviewed first, and then the Committee would look at that issue. She suggested that it could be addressed by Workgroup 1. Judge Armstrong agreed. He said he was going to add a comment to the rule that refers to the statute. Commissioner Adam pointed out that this reference was already in the rule, which ended the discussion.

7. Call to the Public

There were no public members in attendance.

8. Next Meeting

Judge Armstrong stated that the next meeting will be held on Friday, July 9, 2004, 10:00 am-3:00 pm at the Arizona Courts Building, 1501 W. Washington, Conference Room 345. The Conference Call number is 602.542.9006.

9. Adjournment of General Meeting: Judge Armstrong

Judge Armstrong adjourned the meeting at 2:15 p.m.